Supreme Court, U.S.
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No. 09-1124

IN THE
Supreme Court of the United States

ANTONIO GUEVARA MENDOZA, individually, as surviving father of CAROLINA GUEVARA RODRIGUEZ, deceased, *et al.*,
Petitioners,

v.

BRIDGESTONE FIRESTONE NORTH AMERICAN TIRE, LLC, and FORD MOTOR COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION

PHILLIP B. DYE, JR.
VINSON & ELKINS L.L.P.
1001 Fannin Street
Suite 2500
Houston, Texas 77002
(713) 758-2048

Counsel for Respondent Bridgestone Americas Tire Operations, LLC

WADE C. CROSNOE
(*Counsel of Record*)
MICHAEL W. EADY
THOMPSON, COE, COUSINS & IRONS, L.L.P.
701 Brazos, Suite 1500
Austin, Texas 78701
(512) 708-8200
wcrosnoe@thompsoncoe.com

Counsel for Respondent Ford Motor Company

Additional Counsel Listed on Inside Cover

CRAIG A. MORGAN
ATTORNEY AT LAW
718 Sunfish
Austin, Texas 78734
(512) 608-9324

Counsel for Respondent Ford Motor Company

QUESTION PRESENTED

Whether, after a case is remanded to the district court in which it was originally filed from the court to which it had been transferred for pretrial multidistrict litigation (MDL) proceedings, review of a post-remand order denying reconsideration of an order of the MDL court lies in (a) the court of appeals for the court issuing the order denying reconsideration, or (b) the court of appeals for the MDL court, even though the case is no longer pending in that court.

RULE 29.6 STATEMENT

Respondent Bridgestone Americas Tire Operations, LLC (formerly known as Bridgestone North American Tire, LLC, and Bridgestone Firestone North American Tire LLC, as used in the case caption) is a wholly-owned subsidiary of Bridgestone Americas, Inc. (its sole member). Bridgestone Americas, Inc. is a wholly-owned subsidiary of Bridgestone Corporation which is publicly traded in Japan. Bridgestone Corporation has no parent corporation and no publicly held company owns 10% or more of the stock of Bridgestone Corporation.

Respondent Ford Motor Company has no parent corporation, and no publicly held company owns 10% or more of its stock.

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INTRODUCTION

Petitioners identify nothing in the court of appeals' decision that could justify this Court's review of these highly unusual cases. Respondents, parties to a multidistrict litigation (MDL) proceeding sought a writ of mandamus to review a district court's order denying reconsideration of a ruling by another district court that had presided over pretrial MDL proceedings. Respondents sought mandamus relief in the court of appeals with jurisdiction over the district court that issued the order denying reconsideration, rather than in the court of appeals with jurisdiction over the district court in which the pretrial MDL proceedings previously had been conducted. Respondents sought review in the correct court of appeals, the question of appellate jurisdiction presented by these cases arises infrequently, and that question would not warrant this Court's review even if petitioners could demonstrate a conflict among the lower courts over the issue.

Petitioners, in any event, fail to demonstrate that this case implicates any such conflict. Even assuming, *arguendo*, there were a conflict, these cases would not be a suitable vehicle for resolving it. Because respondents have consented to a return jurisdiction clause, the court of appeals' decision may not have significant practical effect on the outcome of the litigation. And as the court of appeals recognized, petitioners are not well-positioned to challenge that court's jurisdiction given their persistent efforts to foreclose every alternate avenue of review. The court of appeals' decision to grant respondents' petition for a writ of mandamus is correct and inherently limited to the "extraordinary" factual circum-

stances of these cases. Pet. App. A20. This Court should deny the petition.

STATEMENT OF THE CASE

1. Petitioners are citizens of Mexico who were injured in—or relatives of people who were injured in—accidents that took place in Mexico and involved Ford vehicles and Firestone tires. Pet. App. A3. Petitioners filed actions in Texas state court seeking damages for injuries arising out of those accidents, and respondents removed the cases to the United States District Court for the Western District of Texas. *Id.*

The Judicial Panel on Multidistrict Litigation (MDL Panel) then invoked its authority under 28 U.S.C. § 1407 to transfer the cases to the Southern District of Indiana for joint pretrial proceedings. Pet. App. A3. Section 1407 permits the MDL Panel to transfer "civil actions involving one or more common questions of fact [that] are pending in different districts to any district for coordinated or consolidated pretrial proceedings," and requires that "[e]ach action so transferred . . . be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated." 28 U.S.C. § 1407(a). The district court from which an action is transferred (and to which a case may be remanded) is the "transferor" or "originating" court. The district court that conducts the coordinated pretrial proceedings is the "transferee" or "MDL" court.

2. a. Around the same time petitioners filed their actions, the MDL Panel transferred another group of cases, including the "*Manez*" or "*Lopez*" case, to the MDL court. *See* Pet. App. A3, B4-B5. The *Manez*

case arose out of the same accident as three of the cases at issue here. Before ruling on petitioners' cases, the MDL court considered respondents' *forum non conveniens* (FNC) motion in *Manez*, which argued that the case should be dismissed and that plaintiffs should refile in Mexico, where the accidents occurred. *Id.* at A3. Under the doctrine of *forum non conveniens*, "when an alternative forum has jurisdiction to hear [a] case, and when trial in the [plaintiffs'] chosen forum would establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience . . . the court may, in the exercise of its sound discretion, dismiss the case," even if jurisdiction and venue would otherwise be proper. *Am. Dredging Co. v. Miller*, 510 U.S. 443, 447-48 (1994) (internal quotation marks omitted).

The MDL court granted the FNC motion, and the plaintiffs appealed. Although the Seventh Circuit recognized that the dismissal "look[ed] like an easy candidate for a straightforward affirmance," the court remanded for the district court to consider two *ex parte* Mexican court decisions that plaintiffs had presented for the first time in the court of appeals. *In re Bridgestone/Firestone, Inc.*, 420 F.3d 702, 704-05 (7th Cir. 2005). Those *ex parte* decisions, the plaintiffs argued, dismissed a case they brought against respondents in a Mexican court and accordingly demonstrated that Mexico was not an "available" forum. *See id.* But respondents first learned of the proceedings in the Mexican court only when the plaintiffs filed the *ex parte* orders in the Seventh Circuit; they were not afforded the opportunity to participate in those proceedings and express their consent to having the case proceed there. *See id.* at

706. The court of appeals accordingly expressed "substantial misgivings about the plaintiffs' actions" in the Mexican court, questioned whether those actions "were taken in good faith," and remanded to the MDL court so it could "thoroughly explore the circumstances surrounding the [Mexican court] decisions." *Id.*

On remand from the Seventh Circuit, the MDL court rejected the plaintiffs' reliance on the Mexican court decisions. The court found that the attorneys for the *Manez* plaintiffs had "manipulated the process" of the Mexican courts, that the judgments issued in the Mexican cases were "fraudulent," and that the plaintiffs and their attorneys—including Dr. Leonel Pereznieto, who is also an expert witness for petitioners in *these* cases—had committed "a fraud" on the court. *In re Bridgestone/Firestone, Inc. Tires Prods. Liab. Litig.*, 470 F. Supp. 2d 917, 920, 923 & n.15 (S.D. Ind. 2006). The court accordingly reaffirmed its prior order granting the FNC motion and dismissing the case.[1]

b. The MDL court then ordered parties in other cases arising out of accidents in Mexico to show cause why their cases should not likewise be dismissed. Pet. App. A5. Respondents sought dis-

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[1] The plaintiffs in *Manez* did not appeal the district court's finding of fraud or the dismissal order, and the *Manez* plaintiffs' counsel in the United States did not appeal the monetary sanctions against them. Dr. Pereznieto appealed the sanctions against him, and the court of appeals vacated those sanctions on procedural grounds and remanded for reconsideration. *Manez v. Bridgestone Firestone N. Am. Tire, LLC*, 533 F.3d 578, 593-94 (7th Cir. 2008). The matter is currently pending in the MDL court on remand. Pet. App. A5 n.3; *see also id.* at B10 (MDL court restating finding of "manipulation" and "misconduct").

missal of these cases, and petitioners responded by citing a new set of *ex parte* orders issued by Mexican courts in cases brought by still other plaintiffs mirroring those offered by the plaintiffs in *Manez*. *Id.* at A6. Petitioners were unable to provide any expert testimony to explain the significance of any of those orders because the MDL court struck the testimony of all of their experts, including Dr. Pereznieto. *Id.* at A15-A16. The MDL court nonetheless concluded that Mexico was not an available forum and denied respondents' FNC motion. *Id.* at A6. In addition, the court filed a Suggestion of Remand of the cases to the Western District of Texas. *Id.* The MDL Panel later ordered the cases conditionally remanded.

Before the cases were remanded, respondents filed a motion in the MDL court for reconsideration of its decision and an alternative motion for the court to certify the issue for interlocutory appeal to the Seventh Circuit. *Id.* Petitioners opposed each of those motions. *Id.* Petitioners also opposed respondents' efforts to prevent the MDL Panel from returning the cases to the Western District until the MDL court issued a ruling on respondents' motion for reconsideration or certification. After the MDL Panel ultimately remanded the cases to the Western District of Texas, the MDL court dismissed the motions for reconsideration and for interlocutory appeal as moot because it no longer had jurisdiction. *See id.* Subsequent to that decision, the MDL court granted respondents' FNC motions in two other sets of cases arising out of accidents in Mexico, recognizing that Mexico is an available forum. *See id.* at A21-A22 n.19 (describing FNC dismissal in *Cantu v. Bridgestone*); Order Granting Defendants' Motion To Dis-

miss Based On *Forum Non Conveniens*, *Servin v. Ford Motor Co.*, No. IP00-9374-C-B/S, at 1, 7 (S.D. Ind. Apr. 19, 2010).

3. Following remand of these cases to the transferor court in the Western District of Texas, respondents renewed, in that court, their motion for reconsideration of the MDL court's decision denying dismissal on grounds of FNC. The transferor court recognized that, in certain circumstances, it could reconsider rulings made by the MDL court. Pet. App. C3. But the court concluded that those circumstances were not present here, and it denied both the motion for reconsideration and respondents' alternative request to certify the issue for interlocutory appeal. *Id.* at C4-C5.

4. Respondents petitioned the Fifth Circuit for a writ of mandamus directing the district court to grant reconsideration and to grant dismissal on FNC grounds. Pet. 10. The court of appeals granted the petition and issued the writ, ordering the district court to issue a judgment of dismissal without prejudice. Pet. App. A24. Although the court agreed with the district court that "some deference must be given to the transferee court's decisions," *id.* at A8, it concluded that "this is an extraordinary case" in which reconsideration was appropriate under the applicable "law of the case doctrine," which permits a court to revisit previous rulings in a case where (i) there is new evidence, (ii) the law has changed; or (iii) the previous "decision was clearly erroneous and would work . . . manifest injustice." *Id.* at A11.

The court held that the MDL court's FNC decision "is so clearly erroneous that it would work manifest injustice in this case," and thus the trans-

feror court clearly erred in declining to reconsider it after remand. *Id.* at A12. The court explained that it had repeatedly held "that Mexico is an available forum for tort suits against a defendant that is willing to submit to jurisdiction," *id.*, and emphasized that respondents were "willing to submit to a return jurisdiction clause," meaning that they agreed to return to United States courts and proceed to trial in Texas if Mexican courts would not hear the cases. *Id.* at A17. The court also noted that "[r]econsideration by the transferor court" in these cases "would have posed no threat to the MDL process and, in fact, would have fostered the salutary goal of consistency in that process," because "[t]he inconsistencies between the treatment of the" petitioners in these cases and the plaintiffs in the *Manez* and *Cantu* cases, in which the MDL court granted respondents' FNC motions, "are striking." *Id.* at A21-A22 n.19.

The court of appeals also "note[d] [its] distaste at [petitioners'] argument that this case should not be considered by [the Fifth Circuit] because it should have been appealed to the Seventh Circuit." *Id.* at A22 n.20. The court of appeals recognized that petitioners had "opposed all other avenues for reconsideration of the [MDL court's] decision," and accordingly concluded it was "disingenuous at best for [petitioners] now to claim that [the Fifth Circuit's] jurisdiction was improper." *Id.*

REASONS FOR DENYING THE PETITION

The decision of the court of appeals is correct, and petitioners have failed to identify any conflict between that decision and the decision of any other court of appeals. Petitioners also fail to identify any recurring issue of national importance raised by the unusual facts of these cases, and the court of appeals' grant of mandamus relief is necessarily limited to those anomalous circumstances. The petition should be denied.

1. An appeal from a district court decision lies in the "court of appeals for the circuit embracing the district." 28 U.S.C. § 1294(1). Mandamus review of district court orders is governed by the same territorial rule. *See* 28 U.S.C. § 1651(a) (authorizing courts to issue writs, including mandamus, "in aid of their respective jurisdictions"); *In re BBC Int'l, Ltd.*, 99 F.3d 811, 813 (7th Cir. 1996) ("Power to issue writs of mandamus depends on power to entertain appeals when the case ends."); *In re Ojeda Rios*, 863 F.2d 202, 204 (2d Cir. 1988) (rejecting "conten[tion] that a court of appeals may issue mandamus to a district court located beyond the scope of its appellate jurisdiction").

Petitioners argue that the Fifth Circuit below "erroneously extend[ed] its appellate jurisdictional reach" by entertaining respondents' mandamus petition. Pet. 13; *see id.* at i. Petitioners appear to suggest that review in these cases properly lay in the court of appeals with jurisdiction over the MDL district court (*i.e.*, the Seventh Circuit) rather than the court of appeals with jurisdiction over the transferor district court to which the cases were remanded (*i.e.*, the Fifth Circuit). *See, e.g.*, *id.* at 13 & n.11; *see also*

id. at i (question presented). Petitioners are incorrect.

The order under review was the post-remand order of the district court for the Western District of Texas denying reconsideration of the MDL court's FNC decision. *See* Pet. App. A7 (stating that "issue" is "whether we can grant mandamus on [the] district court's refusal to reconsider a pretrial MDL decision"). Because that order denying reconsideration was issued by a district court located within the territory of the Fifth Circuit, *see* 28 U.S.C. § 41, review of that order—including mandamus review—lay in the Fifth Circuit, not the Seventh Circuit. Although petitioners at times, including in the question presented, suggest that these cases present the question of appellate jurisdiction over an order issued by the Indiana MDL court (*e.g.* Pet. i; 13), the cases in fact raise the question of whether the Fifth Circuit had jurisdiction to review an order issued by the district court for the Western District of Texas.

Indeed, even if these cases *did* raise the question of the proper forum for appellate review of an order that had been issued by the MDL court, it is settled that, "[o]nce an [MDL] action is remanded to the transferor district, it will be the court of appeals for the transferor district that will have appellate jurisdiction over any unreviewed matters," regardless whether those matters were decided "by the transferee court prior to transfer" or the "transferor court subsequent to remand." 17 James Wm. Moore *et al.*, Moore's Federal Practice § 112.07[4] (3d ed. 2010); *see, e.g., Allegheny Airlines, Inc. v. LeMay*, 448 F.2d 1341, 1344-45 (7th Cir. 1971) (per curiam); *In re Baseball Bat Antitrust Litig.*, 112 F. Supp. 2d 1175, 1176 (J.P.M.L. 2000); *In re Air Crash Off Long Is-*

land, N.Y., 27 F. Supp. 2d 431, 435 (S.D.N.Y. 1998). It follows necessarily that, where, as here, the order under review is a post-remand order of the transferor court, the court of appeals with authority to review that order is the court of appeals for the circuit embracing the transferor district—here, the Fifth Circuit.

2. Petitioners identify no court of appeals that has reached a contrary conclusion.

a. *FMC Corp. v. Glouster Engineering Co.*, 830 F.2d 770 (7th Cir. 1987), does not assist petitioners. *See* Pet. 14-16. That case involved an interlocutory appeal from a decision of an MDL court located in another circuit while the proceedings remained pending in—and thus had not been remanded from—the MDL court. 830 F.2d at 770. The Seventh Circuit concluded that jurisdiction lay in the court of appeals for the circuit embracing the MDL district court, which had issued the relevant order and where the proceedings remained pending. *Id.* at 771-72. Nothing in *FMC* suggests that, where, as here, a case has been remanded to the transferor court and the order under review is an order of that court, appellate jurisdiction nonetheless would still lie in the court of appeals for the circuit comprising the MDL court. To the contrary, the court in *FMC* explicitly stated that, after remand, "any appeal from the judgment entered after trial would be heard by the court of appeals for the transferor court." *Id.* at 772. Indeed, the Seventh Circuit had previously held that, after a case has been remanded to the transferor court, even orders previously issued by the MDL court are reviewable in the court of appeals for the transferor court. *See Allegheny Airlines*, 448 F.2d at 1344-45.

b. The court of appeals' decision likewise poses no conflict with the Fourth Circuit's decision in *In re Food Lion, Inc.*, 73 F.3d 528 (4th Cir. 1996). *See* Pet. 16-17. There, cases from district courts located in the Fourth, Sixth, and Eleventh Circuits were consolidated for pretrial proceedings in an MDL court within the Fourth Circuit. After the cases were later remanded to the respective transferor courts, the Fourth Circuit heard a consolidated appeal in three cases that had been remanded to district courts in North Carolina (*i.e.*, within the territory of the Fourth Circuit). The Fourth Circuit observed that the appeals "involv[ed] precisely the same set of issues as any appeals that might be taken . . . in the cases remanded to the transferor courts outside North Carolina," including courts in the Sixth and Eleventh Circuits. 73 F.3d at 530-32 & n.3. In order to eliminate the "possibility that [the MDL court's] decisions could be . . . reviewed by as many as three courts of appeal," the court directed the MDL Panel to retransfer the remaining cases to the MDL court and ordered the MDL court then to enter a final, appealable judgment pursuant to Federal Rule of Civil Procedure 54(b), thus enabling appeals from all cases to be combined and heard in the Fourth Circuit together with the pending appeals. *Id.* at 533.[2]

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[2] The Fourth Circuit observed that the "better practice" would have been for the MDL court to facilitate an immediate appeal by directing entry of a final judgment under Federal Rule of Civil Procedure 54(b) or certifying the issue for interlocutory appeal under 28 U.S.C. § 1292(b) before remand. 73 F.3d at 533 & n.14. Here, respondents attempted to obtain certification of an interlocutory appeal of these cases to the Seventh Circuit, but were successfully opposed by petitioners.

The Fourth Circuit's unusual order in *In re Food Lion* does not conflict with the court of appeals' decision in these cases. To the contrary, the Fourth Circuit's order rests on the recognition that, if the remanded cases had remained pending in transferor courts located in the Sixth and Eleventh Circuits, any appeal in those cases would have been heard by those courts of appeals rather than by the court of appeals for the circuit comprising the MDL court. The Fourth Circuit thus assumed that, in the circumstances of these cases, even if the order in question were that of the MDL court, a post-remand appeal would be heard by the court of appeals for the transferor court—here, the Fifth Circuit.[3]

c. Petitioners fare no better in relying (Pet. 18) on *In re PCH Associates*, 949 F.2d 585 (2d Cir. 1991).

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[3] Nor does *Food Lion* conflict with the conclusion of the court of appeals below that "law of the case" principles govern a transferor court's decision on remand to reconsider a decision of an MDL court. Pet. App. A11. Although the *Food Lion* court in dicta quoted a commentator discouraging reconsideration of MDL court orders by transferor courts, *see* 73 F.3d at 531; Pet. 17, the *Food Lion* court had no occasion to consider what standard should apply for post-remand motions for reconsideration because the transferor courts in that case had not reconsidered decisions of the MDL court. *See* 73 F.3d at 532. This case likewise presents no occasion for this Court to address whether, or to what extent, transferor courts may reconsider pre-remand orders of an MDL court: the question presented by the petition does not address that issue, but instead addresses the distinct question of which court of appeals (the Fifth Circuit or the Seventh Circuit) had jurisdiction below. *See* Pet. i. Petitioners, in any event, identify no court of appeals' decision holding that a transferor court lacked the authority to review pre-remand orders of an MDL court where law-of-the-case principles would otherwise have permitted such review. And for the reasons explained *infra*, p. 14, cases presenting that question are unlikely to arise with any frequency.

That case did not involve an MDL proceeding. Rather, the Second Circuit merely held that a district court had not erred in applying the law-of-the-case doctrine to decline to reconsider a previously decided matter.

By relying on *PCH Associates*, petitioners acknowledge that the proper course for a transferor court asked to reconsider a prior order in MDL proceedings is to apply the "'law of the case' doctrine." Pet. 18; *see also id.* (citing *In re Multi-Piece Rim Prods. Liab. Litig.*, 653 F.2d 671, 678 (D.C. Cir. 1981), for the proposition that "[t]he doctrine of the law of the case has its application in multidistrict litigation as well as in traditional litigation"). The court of appeals here agreed. *See* Pet. App. A10. As the *PCH Associates* court recognized, the law-of-the-case "doctrine is a *discretionary* rule of practice," 949 F.2d at 592 (emphasis added), under which, as this Court has explained, a court need not adhere to a prior ruling if "the initial decision was clearly erroneous and would work a manifest injustice." *Christianson v. Cold Indus. Operating Corp.*, 486 U.S. 800, 816 (1988) (internal quotation marks omitted). The Fifth Circuit below applied precisely that standard, *see* Pet. App. A11, and any fact-bound disagreement with the court's application of that settled standard would not warrant review.[4]

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[4] Petitioners appear to suggest (Pet. 14) that the court of appeals' exercise of mandamus jurisdiction is inconsistent with the MDL statute. That statute states that "[p]etitions for an extraordinary writ to review . . . orders subsequent to transfer shall be filed only in the court of appeals having jurisdiction over the transferee district." 28 U.S.C. § 1407(e). As petitioners themselves observe, that "provision reaches those orders issued by the judicial panel." Pet. 14. It does not purport to

3. A number of significant considerations counsel against this Court's review. The question presented is unlikely to arise with any frequency; review could lack practical significance for the outcome of this litigation; and petitioners are poorly situated to challenge the jurisdiction of the court of appeals.

a. To begin with, the question of which circuit has jurisdiction after remand to review a transferor court's refusal to reconsider an MDL court's order is unlikely to arise with any regularity. In many cases, transferee MDL courts can be expected to enter a final appealable judgment under Rule 54(b) or certify interlocutory appeals, such that parties could thereby obtain appellate review before remand to the transferor court. *See FMC*, 830 F.2d at 770 (considering certification of interlocutory appeal from transferee court); *see also In re Food Lion*, 73 F.3d at 533 & n.14 (suggesting that this is the "better practice"). And "because most cases wash out one way or the other before trial," *FMC*, 830 F.2d at 772, many cases are resolved before any occasion for remand arises. Of those that are remanded, "only a fraction" produce appeals, *id.*, and still fewer cases involve requests for review of a transferor court's denial of reconsideration. The circumstances of these cases therefore do not present a recurring situation of the kind warranting this Court's review.

b. Review should also be denied in light of the unusual posture of this case. As the court of appeals emphasized, respondents "were and are willing to submit to a return jurisdiction clause" that "will al-

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address the proper appellate forum for *post-remand* appellate review, much less post-remand review of orders issued by the transferor court.

low both sides—rather than just the plaintiffs—to go before a judge in Mexico and find out whether *this specific suit* can be tried there." Pet. App. A17. If it cannot, the return jurisdiction clause permits petitioners to re-file the suit "in Texas and proceed to trial." *Id.* at A17-A18. Accordingly, even if the court of appeals were incorrect in holding that Mexican courts provide an available forum, this Court's review would not be necessary to correct any such error and ensure that petitioners will have resort to United States courts. The court of appeals' resolution of the question at the heart of the FNC dispute—whether Mexican courts are an "available" forum—thus may have little practical significance in this litigation.

c. In any event, because of the actions taken by petitioners in the transferee court before remand, these cases present a poor vehicle for determining the scope of the courts of appeals' jurisdiction over post-remand orders by transferor courts in MDL cases. As the court of appeals explained, petitioners "opposed all other avenues for reconsideration of the [MDL court's] decision," objecting to each attempt respondents made to seek reconsideration in the MDL court or review in the Seventh Circuit. Pet. App. A22 n.20. Petitioners therefore are poorly positioned to argue in this Court that the Fifth Circuit's decision was improper, and the appeal belonged in the Seventh Circuit. *Id.* (deeming petitioners' argument as "disingenuous at best").

4. Finally, this Court's review is not warranted because the decision below is correct and limited to the particular circumstances of this "extraordinary case." Pet. App. A20. As the court of appeals explained, the transferor court abused its discretion in

refusing to reconsider the clearly erroneous and manifestly unjust order denying dismissal on FNC grounds. Petitioners' "expert on Mexican law was the same person . . . who had been sanctioned by the MDL court for bad faith and fraudulent conduct" in connection with the plaintiffs' efforts in *Manez* to show that Mexican courts are unavailable, whose testimony the MDL court struck, and who was found to have been the "apparent mastermind" behind the *Manez* fraud. *Id.* at A5, A16, A20. The MDL court based its decision denying the FNC motion in these cases on "*ex parte* dismissal orders that were suspiciously similar to orders" that had been "deliberately and fraudulently obtained" in *Manez*.[5] *Id.* at A20. The Fifth Circuit has repeatedly held that Mexico is an available forum for cases like petitioners', and respondents agreed to a return jurisdiction clause that ensured there would be no prejudice from any dismissal of the suit on FNC grounds. *Id.* at A13-A14, A17-A18.

As the court of appeals recognized, the MDL court's decision at the time was inconsistent with two—and now three, *see* Order Granting Defendants' Motion To Dismiss Based On *Forum Non Conveniens*, *Servin v. Ford Motor Co.*, No. IP00-9374-C-B/S (S.D. Ind. Apr. 19, 2010)—other orders that the MDL court has issued granting FNC motions in cases involving accidents in Mexico. Reconsideration therefore was necessary not only to remedy the court's

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[5] Other plaintiffs in similar cases arising out of accidents in Mexico involving Ford vehicles and Michelin tires were sanctioned for failure to comply with a court order requiring that they cooperate with defendants if they filed any case in a Mexican court. *See Garcia v. Ford Motor Co.*, No. 4:05CV02197, 2007 WL 2711600 (E.D. Mo. Sept. 14, 2007).

clear error in denying the availability of a Mexican forum but also to preserve consistency among the MDL court's rulings. The court of appeals' decision to grant mandamus relief was entirely justified and inextricably intertwined with the "extraordinary" facts and procedural history of these cases. Pet. App. A20. The likelihood that any other court will be faced with such unusual circumstances is exceedingly small, and there is no reason for this Court to grant review of the court of appeals' correct, fact-bound decision.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

PHILLIP B. DYE, JR.
VINSON & ELKINS L.L.P.
1001 Fannin Street
Suite 2500
Houston, Texas 77002
(713) 758-2048

Counsel for Respondent Bridgestone Americas Tire Operations, LLC

WADE C. CROSNOE
(*Counsel of Record*)
MICHAEL W. EADY
THOMPSON, COE, COUSINS & IRONS, L.L.P.
701 Brazos, Suite 1500
Austin, Texas 78701
(512) 708-8200
wcrosnoe@thompsoncoe.com

CRAIG A. MORGAN
ATTORNEY AT LAW
718 Sunfish
Austin, Texas 78734
(512) 608-9324

Counsel for Respondent Ford Motor Company

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